

**38 CFR Part 38****RIN 2900-AR00****Veterans Legacy Grants Program****AGENCY:** Department of Veterans Affairs.**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is establishing in regulation the Veterans Legacy Grants Program (VLGP), which will provide funding to educational institutions and other eligible entities to conduct cemetery research and produce educational tools for the public to utilize and learn about the histories of Veterans interred in VA national cemeteries and VA grant-funded State and Tribal Veterans' cemeteries.

**DATES:** This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Tim Nosal, Deputy Director, Office of Engagement and Memorial Innovations, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 443-5601.

(This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:**

On March 26, 2021, VA published a proposed rule in the Federal Register (86 FR 16165) that would implement VA's statutory authority to establish the VLGP. The public comment period ended on May 25, 2021, and VA received 11 comments in response to

the proposed rule. Four commenters expressed support for the rulemaking and the VLGP, and we appreciate the positive feedback. We agree that the VLGP promotes and recognizes the sacrifices of those who came before us and highlights Veterans' contributions. Veterans deserve final resting places that recognize their accomplishments and sacrifices, and the VLGP serves as a mechanism to support this outcome. VA agrees that making this grant program available to "educational institutions" at all levels of school systems promotes inclusion and diversity of perspective. Grants and opportunities provided by the VLGP are substantial ways to bring communities together in support of our Veterans. VA is committed to preserving Veterans' legacies through the award of meaningful grants that support innovative and engaging ways to memorialize Veterans in perpetuity. In the following discussion, we address questions and suggestions for this rulemaking from seven commenters.

One commenter suggested that VA consider including museums as a type of educational institution eligible to participate in this grant program. We agree that museums should be eligible to participate and note that a museum could be considered under either § 38.715(c)(3) as an eligible non-profit entity or § 38.715(c)(5) as an eligible recipient if deemed appropriate by the Secretary. Specifically, under § 38.715(c)(3), a museum that is a non-profit entity and has a demonstrated history of community engagement pertinent to the projects described in a Notice of Funding Availability (NOFA) could be eligible to receive a VLGP grant. Alternatively, even if a museum does not meet those criteria, it could nonetheless be eligible under § 38.715(c)(5) if the Secretary deems it an appropriate recipient based on other considerations. We note that prior to the VLGP authority, VA, through the Veterans Legacy Program (VLP), awarded contracts to museums, state historical societies, and humanities councils, and we will continue to afford those entities the opportunity to

support VA by participating in the VLGP. Based on the foregoing reasons, VA will make no changes to the rulemaking based on this comment.

One commenter noted a few issues in the proposed rule that were vague and required additional information. The commenter inquired about the ways in which VA intends to make the research produced through these grants publicly accessible. The commenter asked whether researchers would share information online, on tombstones, or in another way to ensure the public's understanding of the services provided by Veterans. The National Cemetery Administration (NCA) maintains several public resources (e.g., VA websites, social media, lesson plans, interactive maps, and short video vignettes) that make information about Veterans accessible. Examples of Veteran information include inscription information on gravesite markers or other digital exhibits of photographs and video or audio clips that showcase a grantee's work. Research conducted under a VLGP grant could be published on some of those public resources as well as other agency sites depending on the nature of the information and grant requirements.

The commenter also questioned how the VLGP will ensure increased community engagement and monitor this important aspect of the grant program. Based on existing VLP projects, VLGP projects will continue community engagement through a variety of programmatic activities (e.g., campus fairs, Memorial Day celebrations, scholars presenting at national conferences, articles being published on the findings, and books being developed). A grant applicant's proposal for community engagement would be described in response to the relevant NOFA and within the grant application for VA review.

Regarding the commenter's question about monitoring community engagement and ensuring increases in those activities, we note that § 38.775 provides that VA will conduct compliance reviews, site visits, and inspections of grantee locations and

records as a means of monitoring grant activity. Inherent in each NOFA will be VA's assessment of a project's need for and interest in community engagement and other activities that promote Veteran histories. For each application, NCA will review the applicant's plans to meet the project's purpose. For example, if a grant awardee submitted a proposal for VLGP funds for the purpose of presenting its research on a local Veterans cemetery at a conference, VA would monitor and review the development of materials, monitor preparation for the event, and assess the public's reception of the presentation to determine whether the grantee successfully met this requirement. By targeting community engagement activities in each NOFA and monitoring the grantee's post-award fulfillment of that grant requirement through site visits, compliance reviews, and other interactions, VA can measure and monitor increases and outcomes of those activities. For the foregoing reasons, VA will make no changes to the rulemaking based on this comment.

One commenter suggested that VA needs to make sure that the community is interested in these stories and that educators are wanting to receive this information. VA intends to share these stories and products of the VLGP research through multiple promotional outlets, which include but are not limited to news releases, fact sheets, websites, social media pages, and email listservs. These promotional tools target individuals and Veteran communities interested in learning the stories of our nation's Veterans and promote products of the VLGP to members of the public who may not be familiar with our Veterans' stories. This commenter also encouraged VA to create awareness of the Veterans' stories through publications informing the community. As mentioned, the VLGP will utilize articles, interactive guides, curricula, and various tools to publish findings across multiple platforms. The purpose of the VLGP is to foster interest and engagement in the history of service and sacrifice of Veterans interred in VA national cemeteries. VLGP seeks to provide educational programs in which

teachers or professors introduce their students to researching Veterans and then share that research with the community.

The commenter also contended that VA does not want educators to replace their courses of instruction with information on soldiers' backgrounds, which could deter educators from using this data in the classroom. The commenter suggested that VA should "look into using this data on the Army or Air Force's website or at recruitment fairs" to inform the public of military tasks and duties. We appreciate the commenter's concerns and suggestions. To clarify, VLGP grant-funded projects will not substitute educational instruction or courses of study, but educators are encouraged to incorporate information or data generated from such projects in courses of instruction. To the extent VA collaborates with its Department of Defense partners, information and data gathered from VLGP grant-funded research could be utilized to promote recruitment and for other purposes. VA hopes that VLGP grant-funded projects may serve as the basis for other creative outlets that reach a wide variety of audiences. We thank the commenter for the expressed opinions about the purpose and use of VLGP grant research, but VA will make no changes to the rulemaking based on this comment.

Two commenters expressed the need for clarity about the origination of funds for this grant program and sought understanding on the overall grants process for the VLGP. VA is authorized to award grants from operational funds not to exceed \$500,000. We appreciate the commenters' concerns but will make no changes based on these comments.

One commenter inquired about the impact of the 2020 pandemic on the potential pool of grants and questioned funding availability for new or expanded Veteran projects. The VLP continued normal operations during the pandemic and has not encountered significant impacts. Once the final rule becomes effective, VA will fund the VLGP

through operational funds, and by law, grant awards may not exceed \$500,000. VA will make no changes to the rulemaking based on this comment.

VA appreciates the commenter who suggested that the VLGP recognize fallen first responders and police officers who were killed in the line of duty in the same way as fallen soldiers. The commenter added that students should be taught about officers who gave their lives to protect them and made other contributions to their community to help rebuild relationships. Because VA's mission and scope of programs and services are limited to those with qualifying military service and their eligible spouses and dependents, expanding the scope to include first responders and police officers without qualifying military service would not be supported by current authorities. However, there is nothing that would prevent VA from highlighting a Veteran's contributions to his or her local community through service in the police force or other meaningful ways as part of a VLGP grant project. No changes to the regulatory text will be made based on this comment.

Accordingly, the proposed rule is adopted as a final rule without change.

#### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this final rule is not a significant regulatory action

under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

#### Paperwork Reduction Act

This final rule includes provisions at 38 CFR 38.730 constituting a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA submitted a copy of this rulemaking action to OMB for review and approval. OMB has reviewed and approved this new collection of information and assigned OMB control number 4040-0004.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Receiving or not receiving a grant is unlikely to have a significant economic impact on small entity applicants, specifically non-profit institutions. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and Tribal governments, or on the private sector.

## Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.204, Veterans Legacy Grant Program.

## Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

## List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Veterans.

## Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on October 8, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Jeffrey M. Martin,**

*Assistant Director,*

*Office of Regulation Policy & Management,*

*Office of General Counsel,*

*Department of Veterans Affairs.*

For the reasons set out in the preamble, VA amends 38 CFR part 38 as follows:

**PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS  
AFFAIRS**

1. The authority citation for part 38 is revised to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 2306, 2400, 2402, 2403, 2404, 2407, 2408,  
2411, 7105.

2. Add an undesignated center heading, “Veterans Legacy Grants Program”,  
and §§ 38.710 through 38.785 to read as follows:

\* \* \* \* \*

**Veterans Legacy Grants Program**

Sec.

38.710 Purpose and use of grant funds.

38.715 Definitions.

38.720 Grants—general.

38.725 Notice of Funding Availability (NOFA).

38.730 Applications.

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38.740 Scoring and selection.

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38.750 Withdrawal of grant application.

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38.760 Payments under the grant.

38.765 Grantee reporting requirements.

38.770 Recovery of funds by VA.

38.775 Compliance review requirements.

38.780 Financial management.

38.785 Recordkeeping.

### **Veterans Legacy Grants Program**

#### **§ 38.710 Purpose and use of grant funds.**

Sections 38.710 through 38.785 establish the Veterans Legacy Grants Program (VLGP). Under this program, VA may provide grants to eligible entities defined in § 38.715 to:

- (a) Conduct research related to national, State, or Tribal Veterans' cemeteries;
- (b) Produce educational materials that teach about the history of Veterans interred in national, State, or Tribal Veterans' cemeteries;
- (c) Contribute to the extended memorialization of Veterans interred in national, State, or Tribal Veterans' cemeteries by presenting grantee research on national, State, or Tribal Veterans' cemeteries through site hosting and other digital technologies; and,
- (d) Promote community engagement with the histories of Veterans interred in national, State, or Tribal Veterans' cemeteries.

(Authority: 38 U.S.C. 501(d), 2400 note)

#### **§ 38.715 Definitions.**

For purposes of this part and any Notice of Funding Availability (NOFA) issued pursuant to this part:

(a) *Applicant* means an eligible entity that submits a VLGP grant application that is announced in a NOFA.

(b) *Community engagement* means strategic interaction with identified groups of people, whether they are connected by geographic location, special interest, or affiliation, to identify and address issues related to the legacy of Veterans.

(c) *Eligible recipient (or entity)* means one of the following:

(1) An institution of higher learning;

(2) A local educational agency;

(3) A non-profit entity that the Secretary determines has a demonstrated history of community engagement that pertains to the projects described in the relevant NOFA;

(4) An educational institution; or

(5) Another recipient (or entity) the Secretary deems appropriate.

(d) *Institution of higher learning (IHL)* means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree.

(e) *Educational institution* means any public or private elementary school, secondary school, vocational school, correspondence school, business school, junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution, or other institution furnishing education for adults.

(f) *Local educational agency (LEA)* means any public agency or authority, including a state educational agency, that has administrative control or direction over public elementary or secondary schools under 20 U.S.C. 7801(30). The term would also include any Bureau of Indian Education school, as covered in 20 U.S.C. 7801(30)(C).

(g) *State educational agency (SEA)* means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

(h) *Non-profit entity* means any organization chartered under 26 U.S.C. 501(c)(3).

(i) *Educational materials* means a framework of digital instructional materials relevant to the grade level of K-12 students involved (e.g., lesson plans) that can be used for outreach and other purposes.

(j) *Grantee* means an eligible recipient that is awarded a VLGP grant under this part.

(k) *Notice of Funding Availability (NOFA)* means a Notice of Funding Availability published in the OMB-designated government-wide Web site in accordance with § 38.725 and 2 CFR 200.203 regulations.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

### **§ 38.720 Grants—general.**

(a) *Grants.* VA may award VLGP grants to eligible recipients selected under § 38.730 of this part.

(b) *Maximum amounts.* The maximum grant amount to be awarded to each grantee and the total maximum amount for all grants will be specified in the annually published NOFA.

(c) *Number of grants awarded.* The number of grants VA will award will depend on the total amount of grant funding available at VA's discretion and the funding amount awarded to each grantee, which is based on each grantee's proposal.

(d) *Grant is not a course buyout.* The grant funds shall not be used to substitute a class that an instructor is required to teach during an academic year.

(e) *Matching requirement.* VA will determine whether a grantee must provide matching funds as a condition of receiving a VLGP grant as set forth in the NOFA.

(f) *Grant is not Veterans' benefit.* The VLGP grant is not a Veterans' benefit. VA decisions on VLGP applications are final and not subject to the same appeal rights as Veterans' benefits decisions.

(Authority: 38 U.S.C. 501(d), 2400 note)

### **§ 38.725 Notice of Funding Availability (NOFA).**

When funds are available for VLGP grants, VA will publish a NOFA in the *Federal Register* and in Grants.gov (<http://www.grants.gov>). The NOFA will identify:

(a) The location for obtaining VLGP grant applications, including the specific forms that will be required;

(b) The date, time, and place for submitting completed VLGP grant applications;

(c) The estimated total amount of funds available and the maximum funds available to a single grantee;

(d) The minimum number of total points and points per category that an applicant must receive to be considered for a grant and information regarding the scoring process;

(e) Any timeframes and manner for payments under the VLGP grant;

(f) A description of eligible entities or other eligibility requirements necessary to receive the grant; and

(g) Other information necessary for the VLGP grant application process, as determined by VA, including contact information for the office that will oversee the VLGP within VA.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

### **§ 38.730 Applications.**

To apply for a grant, an eligible entity must submit to VA a complete application package, as described in the NOFA. Applications will be accepted only through Grants.gov (<http://www.grants.gov>). A complete grant application, as further described in the NOFA, includes standard forms specified in the NOFA and the following:

(a) *Project description.* Each project must serve a minimum of one VA national cemetery, State Veterans' cemetery, or Tribal Veterans' cemetery. The applicant must provide a narrative project description that demonstrates the best approach for attaining required results as set forth in the NOFA;

(b) *Project team.* If applicable, the applicant must provide a narrative description of anticipated project team and any work partner(s), including the responsibilities of the principal investigator, the co-principal investigators, and any extramural partner entity;

(c) *Project plan.* The applicant must include a detailed timeline for the tasks outlined in the project description and proposed milestones;

(d) *Expertise and capacity.* The applicant must provide a description of the applicant's ability and capacity to administer the project. This may include evidence of past experience with projects similar in scope as defined by the NOFA, to include descriptions of the engagement model, examples of successful leadership and management of a project of similar scale and budget (or greater), or related work in this field;

(e) *Match.* If specified as a requirement in the NOFA, the applicant must provide evidence of secured cash matching (1:1) funds or of its ability to secure commitments to receive such funds;

(f) *Proposed budget.* The applicant's proposed budget should identify all costs and proposed expenditures, to include additional compensation and honoraria (and to whom); equipment costs; production costs; and travel costs. The applicant must

provide a budget that specifies costs and payments, as well as indirect and other relevant costs. The budget will be submitted in a format specified in the NOFA; and

(g) *Additional information.* Any additional information as deemed appropriate by VA and set forth in the NOFA.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

### **§ 38.735 Additional factors for deciding applications.**

(a) *Applicant's performance on prior award.* VA may consider the applicant's noncompliance with requirements applicable to prior VA or other Federal agency awards as reflected in past written evaluation reports and memoranda on performance and the completeness of required prior submissions.

(b) *Applicant's fiscal integrity.* Applicants must meet and maintain standards of fiscal integrity for participation in Federal grant programs as reflected in 2 CFR 200.205.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

### **§ 38.740 Scoring and selection.**

(a) *Scoring.* VA will only score complete applications received from eligible applicants by the deadline established in the NOFA. The applications must meet the minimum criteria set forth in § 38.730 and will be scored as specified in the NOFA, as set forth in § 38.725.

(b) *Selection of recipients.* All complete applications will be scored using the criteria in paragraph (a) of this section and ranked in order of highest to lowest total score. NOFA announcements may also clarify the selection criteria in paragraph (a) of this section. The relative weight (point value) for each selection will be specified in the NOFA. VA will award any VLGP grant on the primary basis of the scores but will also consider a risk assessment evaluation.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

### **§ 38.745 Disposition of applications.**

(a) *Disposition of applications.* Upon review of an application and dependent on availability of funds, VA will:

(1) Approve the application for funding, in whole or in part, for such amount of funds, and subject to such conditions that VA deems necessary or desirable;

(2) Determine that the application is of acceptable quality for funding, in that it meets minimum criteria, but disapprove the application for funding because it does not rank sufficiently high in relation to other applications to qualify for an award based on the level of funding available, or for another reason as provided in the decision document; or

(3) Defer action on the application for such reasons as lack of funds or a need for further review.

(b) *Notification of disposition.* VA will notify the applicant in writing of the disposition of the application. A signed grant agreement form, as defined in § 38.755, will be issued to the applicant of an approved application.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

### **§ 38.750 Withdrawal of grant application.**

Applicants may withdraw a VLGP application submitted through Grants.gov by writing the specified VA point of contact and including rationale for the withdrawal request within a certain number of days as determined in the NOFA.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

### **§ 38.755 Grant agreement.**

After a grant is approved for award, VA will draft a grant agreement to be executed by VA and the grantee. Upon execution of the grant agreement, VA will obligate the grant amount. The grant agreement will provide that the recipient agrees, and will ensure that each subrecipient (if applicable) agrees, to:

(a) Operate the program in accordance with the provisions of §§ 38.710 through 38.785, 2 CFR part 200, and the applicant's VLGP application;

(b) Comply with such other terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish in the Terms and Conditions of the grant agreement for purposes of carrying out the VLGP project in an effective and efficient manner; and

(c) Provide additional information that VA requests with respect to:

(1) Program effectiveness, as defined in the Terms and Conditions of the grant agreement;

(2) Compliance with the Terms and Conditions of the grant agreement; and

(3) Criteria for evaluation, as defined in the Terms and Conditions of the grant agreement.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

### **§ 38.760 Payments under the grant.**

(a) Grantees are to be paid in accordance with the timeframes and manner set forth in the NOFA.

(b) *Availability of grant funds.* Federal financial assistance will become available subsequent to the effective date of the grant as set forth in the grant agreement.

Recipients may be reimbursed for costs resulting from obligations incurred before the effective date of the grant, if such costs are authorized by VA in the NOFA or the grant agreement or authorized subsequently by VA in writing, and otherwise would be

allowable as costs of the grant under applicable guidelines, regulations, and terms and conditions of the grant agreement.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

#### **§ 38.765 Grantee reporting requirements.**

(a) *Final report.* All grantees must submit to VA, not later than 60 days after the last day of grant period for which a grant is provided under this part, a final report that meets the requirement set forth in the NOFA.

(b) *Additional reporting.* Additional reporting requirements may be requested by VA to allow VA to assess program effectiveness.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

#### **§ 38.770 Recovery of funds by VA.**

(a) *Recovery of funds.* VA may recover from the grantee any funds that are not used in accordance with a grant agreement. If VA decides to recover such funds, VA will issue to the grantee a notice of intent to recover grant funds, and the grantee will then have 30 days to return the grant funds or submit documentation demonstrating why the grant funds should not be returned. After review of all submitted documentation, VA will determine whether action will be taken to recover the grant funds.

(b) *Prohibition of additional VLGP payments.* When VA makes a final decision to recover grant funds from the grantee, VA must stop further payments of grant funds under this part until the grant funds are recovered and the condition that led to the decision to recover grant funds has been resolved.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

**§ 38.775 Compliance review requirements.**

(a) *Site visits.* VA may conduct, as needed, site visits to grantee locations to review grantee accomplishments and management control systems.

(b) *Inspections.* VA may conduct, as needed, inspections of grantee records to determine compliance with the provisions of this part. All visits and evaluations will be performed with minimal disruption to the grantee to the extent practicable.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.203)

**§ 38.780 Financial management.**

(a) *Compliance.* All recipients will comply with applicable requirements of the Single Audit Act Amendments of 1996, as implemented by 2 CFR part 200.

(b) *Financial Management.* All grantees must use a financial management system that complies with 2 CFR part 200. Grantees must meet the applicable requirements of the Office of Management and Budget's regulations on Cost Principles at 2 CFR 200.400-200.475.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.400-200.475)

**§ 38.785 Recordkeeping.**

Grantees must ensure that records are maintained in accordance with 2 CFR 200.333. Grantees must produce such records at VA's request.

(Authority: 38 U.S.C. 501(d), 2400 note and 2 CFR 200.333)